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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,782	11/08/2006	Dorit Plat	7056-X08-020	3410
27317 7590 07/28/2010 Fleit Gibbons Gutman Bongini & Bianco PL 21355 EAST DIXIE HIGHWAY SUITE 115 MIAMI, FL 33180				
EXAMINER				
FISHER, ABIGAIL L				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
07/28/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/572,782

**Applicant(s)**

PLAT ET AL.

**Examiner**

ABIGAIL FISHER

**Art Unit**

1616

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-2, 5, 8, 15, 20-21, 24, 27, 30, 33, 53-59

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s): 3/22/10

13. ☒ Other: See Continuation Sheet

/Mina Haghighatian/  
Primary Examiner, Art Unit 1616

Continuation of 5. Applicant's reply has overcome the following rejection(s): The objections of claims 21, 24 and 27, the rejection of the claims under 35 USC 112, first paragraph and 35 USC 2nd paragraph.

Continuation of 11. does NOT place the application in condition for allowance because: The rejections are maintained for the reasons set forth in the Final Office action. Firstly, the examiner indicates that she can not consider the declaration since it is not signed. The examiner acknowledges applicants intend to submit a signed declaration, however, at the time a response is due by the examiner no signed response had been submitted. However, even if the declaration had been signed, the declaration would not have been persuasive for the following reasons. Applicants have submitted a declaration to show that the method of forming the calcium salt (of prior art De Ferra) of PS results in a PS soluble in oil whereas the instant claims recite a PS salt which is insoluble in oil. Applicants (via the declaration) showed that in the different manners of making that the PS salt is soluble. It is shown in the declaration that it is due to the diphasic nature (organic phase and aqueous phase) that the resulting PS salt is soluble. Applicants' arguments refer to the declaration submitted 12/18/09 wherein the synthesis of the PS salt according to the instant specification only utilizes an aqueous phase. However, the specification teaches (page 31) that the preparation of the stable PS preparation can optionally include organic solvents such as hexane. Therefore, the specification contradicts the declaration and the arguments as it suggests that organic solvents can be utilized to form the PS calcium salt but the declaration states that utilizing these organic solvents results in a PS salt that is soluble in oil. The specification does not teach that one would not include these solvents in order to form an insoluble salt. Therefore, even if the examiner could consider the declaration, the declaration would not be persuasive as it does not match what is found in the specification which teaches the addition of organic solvents is okay.

It is noted that the rejection under 25 USC 112, 2<sup>nd</sup> paragraph as it pertains to claim 1 and claims 55-57 is maintained. Regarding claims 55-57, applicants in their response indicate that nutritional has been removed from the claims however this is not the case as the word still appears in the claims. Claim 1 also still recites the phrase "less than about" which the examiner indicated is indefinite (see page 5 of the last office action). The examiner suggests amending the claim to recite about 5% or less.

Continuation of 13. Other: The declaration submitted 7/16/10 was not considered by the examiner as it is not signed.